COLUMBIA LAW REVIEW.

Published monthly during the Academic Year by Columbia Law Students.

SUBSCRIPTION PRICE, $2.00 PER ANNUM. 30 CENTS PER NUMBER.

NOTES.

BAILEE AS PLAINTIFF—MEASURE OF DAMAGES.—In the recent case of *The Winkfield* [1902] P. 42, the English Court of Appeal found it necessary to pass upon an interesting question which seldom has been squarely presented for judicial decision. The facts were briefly these: A steamship engaged in carrying the mails from the Cape to England, having been sunk in a collision with another vessel caused by the negligent management of the latter, and damages having been assessed and paid into court, the Postmaster-General, as bailee in possession, presented a claim for the value of the letters and parcels lost at sea. This demand was resisted by the other claimants on the fund, who contended that under the common law a bailee can recover damages only to the extent of his interest and, hence, the Postmaster-General, as a representative of the Crown, being under no liability to account to the owners of the mail matter for the loss sustained, was not entitled to an allowance of his claim.

The question here presented is not free from difficulty. We read in Beaumanoir (1283) xxxi, 16, that if a hired thing is stolen the

suit belongs to the bailee *because he is answerable to the person from whom he hired.* In (1410) Y. B. 11 Hen. IV. 23, 24, HANKFORD, J., expresses himself to the same effect, and likewise FINEUX, J., in (1506) Y. B. 21 Hen. VII. 14 b. pl. 23, in a passage cited by Lord COKE in reporting *Heydon and Smith's Case* (1610) 13 Co. Rep. 67, 69, where the latter says: "clearly the bailee or he who hath a special property shall have a general action against a stranger, and shall recover all in damages, because that he is chargeable over." The bailee's duty to account is, in similar terms, referred to as the basis of his right to sue in a large number of cases dating from the time of the year books to the present day. Is it true, then, that when a bailee brings suit against a defendant who has wrongfully injured property in the former's possession, the plaintiff must be content with judgment for nominal damages in every case where the loss occurred under such conditions that he is not "chargeable over" to his bailor? It is difficult to see how such a case could arise under the law as it stood until a comparatively recent period for, so long as the bailee was liable as an insurer—and this was for a century after the decision of *Southcot* v. *Bennet* (1600) Cro. Eliz. 815 (Holmes, Com. Law, 180.)—it would appear that in every case where the bailee could sue, he himself would be liable to account to his bailor. Certainly since *Armory* v. *Delamirie* (1722) 1 Stra. 504, it has not been doubted that a stranger or a wrongdoer may recover the full value of property wrongfully taken from his possession; any other rule would furnish "an invitation to all the world to scramble for the possession." Lord KENYON in *Webb* v. *Fox* (1797) 7 T. R. 387, 393. And there would seem to be no essential difference between the position of a bailee and that of a finder or a wrongdoer, so far as possession as against all the world, save the true owner, is concerned, although an unconvincing effort is made in Clerk and Lindsell on Torts (2d ed. 237) to draw a distinction. In the late case of *Claridge* v. *S. S. Tramway Co.* [1892] 1 Q. B. 422, a divisional court (HAWKINS and WILLS, JJ.) held that the bailee of a horse, injured while in his possession through the negligence of the defendant, but under such circumstances as to relieve the former from legal responsibility to the owner, could recover only nominal damages. This decision is approved in two recent text-books of high standing. 2 Beven on Negligence, 2d ed. 887; Clerk and Lindsell, Torts, 2d ed. 237. But, in *Meux* v. *G. E. Ry. Co.* [1895] 2 Q. B. 387, 394 (C. A.) A. L. SMITH, M. R., said that the case "may possibly require at some future time further consideration." That the result reached was correct may well be questioned, after an examination of the ancient law of bailment.

Chief Justice HOLMES in his lectures on the Common Law (166–180), tracing the origin of the right of the bailee to sue, shows that it dates from the time when resort was had to the law in order to check the practice of cattle-stealing. It seems that his right of action turned solely on the question whether the plaintiff had lost possession against his will. Not until a later

date was the bailor, by an extension of the rule, given standing in court. Until that time, then, his only means of relief lay in holding the bailee strictly to account—as insurer. Thus the true condition of affairs was such that "the bailee was answerable to the owner because he was the only person who could sue," but later, by an inversion of cause and effect "it was said he could sue because he was answerable to the owner." Accepting this explanation (which is not altogether consistent with that in 2 Poll. & Mait. Hist. Eng. Law, 170) of the statements in Beaumanoir and the year books, *supra*, the Court of Appeal reaches the conclusion that *Claridge* v. *S. S. Tramway Co.*, *supra*, was wrongly decided, and holds that the Postmaster-General, in the principal case, was entitled to recover the full value of the lost mail matter. In other words, the saying is true of bailees as well as of other possessors that "the person who has possession has the property . . . for against a wrongdoer possession is a title." CAMPBELL, C. J., in *Jeffries* v. *Railway Co.* (1856) 5 E. & B. 802, 806.

This is the doctrine contended for by American text-writers and adopted in the leading case of *White* v. *Webb* (1842) 15 Conn. 302, and in such other American decisions on the point as have come to our notice. No inconvenience can result, for, as is said by COLLINS, M. R. (p. 61), what the bailee "has received above his own interest he has received to the use of his bailor," and "the wrongdoer, having once paid full damages to the bailee, has an answer to any action by the bailor."

EVIDENCE—NEW YORK RULE AS TO ADMISSIONS BY THE ASSIGNOR OF PERSONAL PROPERTY.—Admissions by the owner of land while holder of the title are universally admitted against his subsequent grantee. So, too, in almost every jurisdiction, the admissions of the owner of personal property, made during his ownership, are allowed in evidence against his assignee, whether a mere volunteer or for value. But in New York, ever since the leading case of *Paige* v. *Cagwin* (1843) 7 Hill, 379, it has been well-settled law that such admissions are not good evidence as against a subsequent assignee of personal property for value. It was there held that statements made by the payee of a promissory note while he owns and holds it, are not admissible against one to whom it is subsequently transferred for value after maturity. The question now arises as to the position of a mere volunteer, and in determining this the language in *Paige* v. *Cagwin* becomes of importance. At page 379 the court speaks as follows: "It may I think be laid down as a general proposition, that the cases in which such evidence has been held admissible are those only where the declarations were made by a party really in interest, or by one through whom the plaintiff claimed as a privy by representation, as in cases of bankruptcy, death and others of a similar character. Where the rule is applicable, there must be 'an identity of interest' between the assignor and assignee. That relation appears to me to be based on the fact that the rights of the assignor continue and are represented by the assignee. Where a person